

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 139

AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-38-2-3, AS AMENDED BY P.L.156-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The court may revoke a person's probation if:

- (1) the person has violated a condition of probation during the probationary period; and
- (2) the petition to revoke probation is filed during the probationary period or before the earlier of the following:
 - (A) One (1) year after the termination of probation.
 - (B) Forty-five (45) days after the state receives notice of the violation.

(b) When a petition is filed charging a violation of a condition of probation, the court may:

- (1) order a summons to be issued to the person to appear; or
- (2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.
- (c) The issuance of a summons or warrant tolls the period of probation until the final determination of the charge.
- (d) The court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing.
- (e) The state must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is

SEA 139 — Concur+



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entitled to confrontation, cross-examination, and representation by counsel.

(f) Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.

(g) If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may **impose one (1) or more of the following sanctions:**

- (1) Continue the person on probation, with or without modifying or enlarging the conditions.
- (2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period. ~~or~~
- (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

(h) If the court finds that the person has violated a condition of home detention at any time before termination of the period, and the petition to revoke probation is filed within the probationary period, the court shall:

- (1) order ~~a sanction~~ **one (1) or more sanctions** as set forth in subsection (g); and
- (2) provide credit for time served as set forth under IC 35-38-2.5-5.

(i) If the court finds that the person has violated a condition during any time before the termination of the period, and the petition is filed under subsection (a) after the probationary period has expired, the court may:

- (1) reinstate the person's probationary period, with or without enlarging the conditions, if the sum of the length of the original probationary period and the reinstated probationary period does not exceed the length of the maximum sentence allowable for the offense that is the basis of the probation; or
- (2) order execution of all or part of the sentence that was suspended at the time of the initial sentencing.

(j) If the court finds that the person has violated a condition of home detention during any time before termination of the period, and the petition is filed under subsection (a) after the probation period has expired, the court shall:

- (1) order a sanction as set forth in subsection (i); and
- (2) provide credit for time served as set forth under IC 35-38-2.5-5.

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(k) A judgment revoking probation is a final appealable order.

(l) Failure to pay fines or costs required as a condition of probation may not be the sole basis for commitment to the department of correction.

(m) Failure to pay fees or costs assessed against a person under IC 33-40-3-6, IC 33-37-2-3(e), or IC 35-33-7-6 is not grounds for revocation of probation.

SECTION 2. IC 35-38-2.5-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5.5. (a) **Except as provided in subsection (b), a court in one (1) county** may not place an offender who resides in ~~a different~~ **another** county on home detention ~~unless: in the other county unless:~~

(1) the offender is eligible for home detention in the county in which the person resides; and

(2) supervision of the offender will be conducted by the probation department or community corrections program located in the county in which the offender resides.

~~(b) If an offender is:~~

~~(1) currently serving home detention in a county that operates a home detention program; and~~

~~(2) being supervised by a probation department or community corrections program located in a different county;~~

~~the court shall order that supervision of the offender be transferred to the probation department or community corrections program located in the county where the offender resides.~~

(b) If the offender described in subsection (a) resides in a county that is adjacent to the county in which the sentencing court is located, the supervision of the offender may be conducted by either the:

(1) probation department; or

(2) community corrections program;

located in the county in which the sentencing court is located.

(c) All home detention fees described in section 8 of this chapter shall be collected by the probation department or community corrections program that supervises the offender.

(d) A probation department or community corrections program that supervises an offender on home detention is responsible for the expenses of the supervision.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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